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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,519	07/14/2003	Brenda A. Wickstrom	L&P-1379	7487
26875	7590	02/24/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			CONLEY, FREDRICK C	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	10/619,519	WICKSTROM, BRENDA A.
	Examiner	Art Unit
	FREDRICK C CONLEY	3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 and 19-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 8-12 is/are allowed.
- 6) Claim(s) 1-7, 13, 14 and 19-42 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

Claim Objections

Claim 19 recites the limitation "said modular spring". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-7, 14, 19-26, 28-31, 33-38, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,577,841 to Hagemeister in view of U.S. Pat. No. 198,546 t Lombart.

Claim 1, Hagemeister discloses a bedding product comprising:

a base 48 comprising a pair of end rails, a pair of side rails and a plurality of intermediate rails,
a plurality of modular springs 10,
a plurality of spacers 46, and
a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails and an upholstered covering. Lombad discloses a plurality of intermediate slats (C) spaced above intermediate rails and upholstered covering (col. 2 lines 9-12). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a

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plurality of intermediate slats as taught by Lombad with the plurality of spacers and the modular springs of Hagemeister and employ an upholstered covering in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical position and form a spring mattress.

Claim 2, Hagemeister discloses a bedding product comprising:

a base 48 comprising a pair of end rails, a pair of side rails and a plurality of intermediate rails,

a plurality of modular springs 10,

a plurality of spacers 46, and

a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombart discloses a plurality of intermediate slats (C) spaced above intermediate. It would have been obvious to one having ordinary skill in the ad at the time of the invention to employ a plurality of intermediate slats as taught by Lombad with the plurality of spacers and the modular springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical position.

Claim 3, wherein said spacers are springs 46.

Claims 5-6, it is well known for one of ordinary skill in the art to construct a mattress using wood. The Examiner takes Official notice of the use of wood to construct a mattress and it would have been obvious at the time of the invention to employ wood for the intermediate slats and base of Hagemeister.

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Claim 7, wherein said spacers are stapled (d) to said intermediate slats and to said intermediate rails of said base (Lombart).

Claim 14, Hagemeister discloses a bedding product comprising:

a base 48 comprising a pair of end rails, a pair of side rails and a plurality of intermediate rails,

a plurality of modular springs 10,

a plurality of spacers 46, and

a grid 14 spaced above the base. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombart discloses a plurality of intermediate slats (C) spaced above intermediate. It would have been obvious to one having ordinary skill in the ad at the time of the invention to employ a plurality of intermediate slats as taught by Lombard with the plurality of spacers and the modular springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical position.

Claim 19, Hagemeister discloses a bedding product comprising:

a base 48 comprising a plurality of rails,

a plurality of modular springs 10,

a plurality of springs 46, and

a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails and an upholstered covering. Lombart discloses a plurality of intermediate slats (C) spaced above intermediate rails and upholstered covering (col. 2 lines 9-12). It would have been

obvious to one having ordinary skill in the art at the time of the invention to employ a plurality of intermediate slats as taught by Lombart with the plurality of spacers and the modular springs of Hagemeister and employ an upholstered covering in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical position and form a spring mattress.

Claim 20, Hagemeister discloses a bedding product comprising:

a base 48 comprising a plurality of rails,

a plurality of modular springs 10, and

a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombad discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious to one having ordinary skill in the ad at the time of the invention to employ a plurality of intermediate slats as taught by Lombart with the plurality of spacers and the modular springs of Hagemeister and employ in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical.

Claim 21, wherein resilient spacers 46 extend between said intermediate slats

and said base.

Claim 22, Hagemeister discloses a bedding product comprising:

a base 48 comprising a plurality of rails,

a plurality of modular springs 10,

a plurality of resilient spacers 46, and

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a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombad discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a plurality of intermediate slats as taught by Lombad with the plurality of spacers and the modular springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical.

Claim 23, it is well known for one of ordinary skill in the art to construct a mattress using wood. The Examiner takes Official notice of the use of wood to construct a mattress and it would have been obvious at the time of the invention to employ wood for the intermediate slats and base of Hagemeister.

Claim 24, wherein said spacers are springs.

Claim 25, Hagemeister discloses a bedding product comprising:
a base 48 comprising a plurality of rails,
a plurality of modular springs 10,
a plurality of spacers 46, and
a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombart discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a plurality of intermediate slats as taught by Lombad with the plurality of spacers and the

modular springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical.

Claim 26, wherein said spacers are springs.

Claim 28-29, it is well known for one of ordinary skill in the art to construct a mattress using wood. The Examiner takes Official notice of the use of wood to construct a mattress and it would have been obvious at the time of the invention to employ wood for the intermediate slats and base of Hagemeister.

Claim 30, Aherein said spacers are stapled (d) to said intermediate slats and to said rails of said base (Lombart).

Claim 31, Hagemeister discloses a bedding product comprising:

a base 48 comprising a pair of transversely extending end rails, a pair of longitudinally extending side rails and a longitudinally extending support rail,
a plurality of spacers 46,

a plurality of modular springs 10,

a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombad discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious to one having ordinary skill in the ad at the time of the invention to employ a plurality of intermediate slats as taught by Lombart with the plurality of spacers and the modular springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical.

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Claims 33-34, it is well known for one of ordinary skill in the art to construct a mattress using wood. The Examiner takes Official notice of the use of wood to construct a mattress and it would have been obvious at the time of the invention to employ wood for the intermediate slats and base of Hagemeister.

Claim 35, wherein said spacers are stapled (d) to said intermediate slats and to intermediate rails of said base (Lombart).

Claim 36, wherein said spacers are resilient.

Claim 37, wherein said spacers are metal springs.

Claim 38, Hagemeister discloses a bedding product comprising:

a base 48 comprising a pair of end rails, a pair of side rails and a support rail,
a plurality of spacers 46,

a plurality of modular springs 10, and

a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombad discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a plurality of intermediate slats as taught by Lombart with the plurality of spacers and the modular springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical.

Claim 41, Hagemeister discloses a bedding product comprising:

a base 48 comprising a pair of end rails, a pair of side rails and a support rail,
a plurality of spacers 46, and

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a plurality of modular springs 10. Hagemeister fails to disclose a plurality of intermediate slats spaced above said intermediate rails. Lombad discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a plurality of intermediate slats as taught by Lombard with the plurality of spacers and the modular springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical.

Claim 42, further comprising a grid 14 secured to upper portions of said modular springs.

Claims 4, 13, 27, 32, and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,577,841 to Hagemeister in view of U.S. Pat. No. 198,546 to Lombart, and ~~further~~ in view of U.S. Pat. No. 4,100,631 to Slone.

Claim 4, Hagemeister discloses a bedding product comprising:

a plurality of modular springs 10, and

a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombart discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious to one having ordinary skill in the ad at the time of the invention to employ a plurality of intermediate slats as taught by Lombard with the plurality of spacers and the modular springs of Hagemeister in order to provide a double spring assembly wherein

upper and lower springs are kept in their proper vertical position. Hagemeister also fails to disclose sinuous springs. Slone discloses a bedding product having sinuous springs. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ sinuous springs as taught by Slone in order to provide a lighter weighted mattress.

Claim 13, Hagemeister discloses a bedding product comprising:

a base 48 comprising a pair of end rails, a pair of side rails and a plurality of intermediate rails,
a plurality of modular springs 10, and
a grid 14 secured to said modular springs. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombad discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a plurality of intermediate slats as taught by Lombad with the plurality of spacers and the modular springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical position. It is well known for one of ordinary skill in the art to construct a mattress using wood. The Examiner takes Official notice of the use of wood to construct a mattress and it would have been obvious at the time of the invention to employ wood for the intermediate slats of Hagemeister. Hagemeister also fails to disclose sinuous springs. Slone discloses a bedding product having sinuous springs 12. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ sinuous springs as taught

by Slone in order to provide a lighter weighted mattress.

Claims 27 and 32, Hagemeister discloses all of the Applicant's claimed limitations except for sinuous springs. Slone discloses a bedding product having sinuous springs. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ sinuous springs as taught by Slone in order to provide a lighter weighted mattress.

Claim 39, Hagemeister discloses a bedding product comprising:

a base 48 comprising a pair of end rails, a pair of side rails and a plurality of intermediate rails, and

a plurality of springs 10. Hagemeister fails to disclose a plurality of intermediate slats spaced above intermediate rails. Lombad discloses a plurality of intermediate slats (C) spaced above intermediate rails. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a plurality of intermediate slats as taught by Lombad with the springs of Hagemeister in order to provide a double spring assembly wherein upper and lower springs are kept in their proper vertical position. It is well known for one of ordinary skill in the art to construct a mattress using wood.

Hagemeister also fails to disclose sinuous springs. Slone discloses a bedding product having sinuous springs 12. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ sinuous springs as taught by Slone in order to provide a lighter weighted mattress.

Claim 40, further comprising a grid 14 secured to upper portions of said springs.

Allowable Subject Matter

Claims 8-12 are allowed.

Response to Arguments

Applicant's arguments filed 12/06/04 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hagemeister discloses a spring assembly having modular springs 10 and Lombard discloses a spring assembly has intermediate slats (C) spaced above intermediate rails. One having ordinary skill in the art would have combined the teachings of Hagemeister and Lombard to provide a separate double spring assembly wherein upper and lower springs are kept in their proper vertical position, and the bagging of the springs is prevented, as suggested by Lombard (col. 2 lines 15-20). With regards to Sloan, one having ordinary skill in the art would have combined the teaches of Sloan in order to provide a spring assembly with few in number resilient elements that is lighter in weight, as suggested by Sloan (col. 1 lines 27-34).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 703-308-7468. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



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